

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

NEXTIER COMPLETION SOLUTIONS  
INC.

*Plaintiff,*

V.

DYNAENERGETICS EUROPE GMBH  
and DYNAENERGETICS US, INC.

*Defendants.*

Civil Action No. 4:21-cv-01328

## Jury Trial Demanded

**PLAINTIFF AND COUNTERCLAIM DEFENDANT NEXTTIER COMPLETION  
SOLUTIONS INC.'S ANSWER TO DEFENDANTS AND COUNTERCLAIM  
PLAINTIFFS' COUNTERCLAIMS**

Plaintiff and Counterclaim Defendant NexTier Completion Solutions Inc. (“NexTier” or “Counterclaim Defendant”) files this Answer to Defendants and Counterclaim Plaintiffs DynaEnergetics Europe GmbH and DynaEnergetics US, Inc.’s (collectively “DynaEnergetics” or “Counterclaim Plaintiff”) Counterclaims. In support, Counterclaim Defendant states the following:

## I. THE PARTIES

1. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 1, and therefore denies the same.
2. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 2, and therefore denies the same.
3. Counterclaim Defendant admits to the allegations in Paragraph 3.

## **II. JURISDICTION AND VENUE**

4. Counterclaim Defendant admits that Paragraph 7 purports to state a claim for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271.

5. Counterclaim Defendant admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Counterclaim Defendant admits the allegations in Paragraph 6.

7. Counterclaim Defendant admits that it has consented to venue in this District pursuant to at least 28 U.S.C §§ 1391(b) and (c) and 1400(b). Counterclaim Defendant denies the remaining allegations in Paragraph 7.

## **III. FACTS**

8. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 8, and therefore denies the same.

9. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 9, and therefore denies the same.

10. Counterclaim Defendant admits that the '697 Patent is titled "PERFORATION GUN COMPONENTS AND SYSTEM." Counterclaim Defendant admits that the face of the copy of the '697 Patent attached as Exhibit A to the Complaint states that it was issued on Nov. 24, 2020 and states that the Assignee is DynaEnergetics Europe GmbH. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 10, and therefore denies the same.

11. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 11, and therefore denies the same.

12. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 12, and therefore denies the same.

13. Counterclaim Defendant denies that it has, either alone or in concert, distributed, sold or offered to sell the GameChanger in the United States, including within the State of Texas and within this District. Counterclaim Defendant admits that it has manufactured the GameChanger in the United States, including within the State of Texas and within this District. Counterclaim Defendant admits that it has used the GameChanger in the United States, including within the State of Texas and within this District.

14. Counterclaim Defendant admits that Exhibit B to the Amended Complaint appears to be a copy of a webpage from NexTier Oilfield Solutions Inc.'s website, <http://nextierofs.com>, picturing and describing aspects of the GameChanger. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 14, and therefore denies the same.

15. Counterclaim Defendant admits that Exhibit C to the Amended Complaint appears to be a PDF that states it was available at NexTierOFS.com and provides information about the GameChanger. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 15, and therefore denies the same.

16. Counterclaim Defendant denies the allegations in Paragraph 16.

17. Paragraph 17 purports to recite Claim 1 of the '697 Patent. To the extent Counterclaim Plaintiffs' recitation differs from the actual limitations of Claim 1 of the '697 Patent, Counterclaim Defendant denies the allegations of Paragraph 17.

18. Counterclaim Defendant denies the allegations in Paragraph 18.

19. Counterclaim Defendant denies the allegations in Paragraph 19.

20. Counterclaim Defendant denies the allegations in Paragraph 20.

21. Counterclaim Defendant denies the allegations in Paragraph 21.

22. Counterclaim Defendant denies the allegations in Paragraph 22.

23. Counterclaim Defendant admits that it has used the PerfAlign Self-Orienting Gun System purchased from SWM in the United States, including within the State of Texas. Counterclaim Defendant denies the remaining allegations in Paragraph 23.

24. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 24, and therefore denies the same.

25. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 25, and therefore denies the same.

26. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 26, and therefore denies the same.

27. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 27, and therefore denies the same.

28. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 28, and therefore denies the same.

29. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 29, and therefore denies the same.

30. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 30, and therefore denies the same.

31. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 31, and therefore denies the same.

32. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 32, and therefore denies the same.

33. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 33, and therefore denies the same.

34. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 34, and therefore denies the same.

35. Counterclaim Defendant denies the allegations in Paragraph 35.

36. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 36, and therefore denies the same.

37. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 37, and therefore denies the same.

38. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 38, and therefore denies the same.

39. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 39, and therefore denies the same.

40. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 40, and therefore denies the same.

41. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 41, and therefore denies the same.

42. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 42, and therefore denies the same.

43. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 43, and therefore denies the same.

44. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 44, and therefore denies the same.

45. Counterclaim Defendant admits that Exhibit K to the Amended Complaint is a copy of a letter sent to NexTier Oilfield Solutions Inc.'s president on September 11, 2020. Counterclaim Defendant denies the remaining allegations in Paragraph 45.

46. Counterclaim Defendant denies the allegations in Paragraph 46.

47. Counterclaim Defendant denies the allegations in Paragraph 47.

48. Counterclaim Defendant denies the allegations in Paragraph 48.

**COUNT I – INFRINGEMENT OF THE '697 PATENT (GAMECHANGER)**

49. Counterclaim Defendant repeats and incorporates by reference its responses contained in the foregoing paragraphs, as if stated fully herein.

50. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 50, and therefore denies the same.

51. Counterclaim Defendant denies the allegations in Paragraph 51.

52. Counterclaim Defendant denies the allegations in Paragraph 52.

53. Counterclaim Defendant denies the allegations in Paragraph 53.

54. Counterclaim Defendant denies the allegations in Paragraph 54.

**COUNT II – INFRINGEMENT OF THE '697 PATENT (SWM)**

55. Counterclaim Defendant repeats and incorporates by reference its responses contained in the foregoing paragraphs, as if stated fully herein.

56. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 56, and therefore denies the same.

57. Counterclaim Defendant denies the allegations in Paragraph 57.

58. Counterclaim Defendant denies the allegations in Paragraph 58.

59. Counterclaim Defendant denies the allegations in Paragraph 59.

60. Counterclaim Defendant denies the allegations in Paragraph 60.

**COUNT III – INFRINGEMENT OF THE '697 PATENT (G&H)**

61. Counterclaim Defendant repeats and incorporates by reference its responses contained in the foregoing paragraphs, as if stated fully herein.

62. Counterclaim Defendant lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 62, and therefore denies the same.

63. Counterclaim Defendant denies the allegations in Paragraph 63.

64. Counterclaim Defendant denies the allegations in Paragraph 64.

65. Counterclaim Defendant denies the allegations in Paragraph 65.

66. Counterclaim Defendant denies the allegations in Paragraph 66.

**IV. ATTORNEYS' FEES**

67. Counterclaim Defendant denies the allegations in Paragraph 67.

**V. JURY DEMAND**

68. Counterclaim Plaintiffs' demand for a jury trial does not require a response by Counterclaim Defendant.

**VI. PRAYER FOR RELIEF**

69. Counterclaim Defendant denies that Counterclaim Plaintiffs are entitled to any relief whatsoever, including but not limited to the relief sought in Paragraphs A–H of Counterclaim Plaintiffs' Prayer for Relief.

## **DEFENSES**

Counterclaim Defendant incorporates by reference as if fully set forth herein its responses to Paragraphs 1– 68 of Counterclaim Plaintiffs’ Complaint. To the extent not expressly admitted above, Counterclaim Defendant denies the factual allegations contained in the Complaint. Without assuming any burden other than that imposed by operation of law and without reducing or removing Counterclaim Plaintiffs’ burdens of proof on its affirmative claims, Counterclaim Defendant alleges and asserts the following defenses in response to Counterclaim Plaintiffs’ Complaint and Counterclaim Plaintiffs’ assertion of infringement of the ’697 Patent, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition, Counterclaim Defendant specifically reserves all rights to allege additional defenses that become known through the course of discovery.

### **FIRST SEPARATE DEFENSE** **(FAILURE TO STATE A CLAIM)**

1. Counterclaim Plaintiffs have failed to state a claim upon which relief can be granted.

### **SECOND SEPARATE DEFENSE** **(NON-INFRINGEMENT)**

2. Counterclaim Defendant has not infringed, and does not infringe, either literally or under the doctrine of equivalents, any valid and enforceable claim of the ’697 Patent, whether directly, indirectly, contributorily, by inducement, individually, jointly, willfully, or otherwise.

### **THIRD SEPARATE DEFENSE** **(INVALIDITY)**

3. The claims of the ’697 Patent are invalid for failure to comply with one or more of the statutory requirements of or conditions for patentability specified by 35 U.S.C. §§ 101, et seq.,

including but not limited to 35 U.S.C. §§ 101, 102, 103, and/or one or more paragraphs of § 112, and the rules and laws pertaining to those provisions as will be explained in Counterclaim Defendants' P.R. 3-3 Disclosure of Invalidity Contentions and Counterclaim Defendants' Ineligibility Contentions.

**FOURTH SEPARATE DEFENSE**  
**(PROSECUTION HISTORY ESTOPPEL AND DISCLAIMER)**

4. Counterclaim Plaintiffs are precluded from construing any valid claim of the '697 Patent to be infringed, literally or under the Doctrine of Equivalents, due to admissions, arguments, amendments, representations, and/or statements made to the U.S. Patent and Trademark Office (a) during prosecution of the '697 Patent, (b) in the specification and claims of the '697 Patent, and/or (c) during the prosecution of patents and applications related to the '697 Patent.

**FIFTH SEPARATE DEFENSE**  
**(NO WILLFUL INFRINGEMENT)**

5. Counterclaim Plaintiffs are not entitled to enhanced damages under 35 U.S.C. § 284, at least because Counterclaim Plaintiffs have failed to show, and cannot show, that any infringement has been willful and/or egregious.

**SIXTH SEPARATE DEFENSE**  
**(LIMITATION ON DAMAGES)**

6. Counterclaim Plaintiffs' claims for relief are statutorily limited in whole or in part by 35 U.S.C. § 286.

7. To the extent that Counterclaim Plaintiffs or any licensee of the '697 Patent failed to properly mark any of their relevant products as required by 35 U.S.C. § 287 or otherwise give proper notice that Counterclaim Defendant's actions allegedly infringed any claim of the '697 Patent, Counterclaim Defendant is not liable to Counterclaim Plaintiffs for the acts alleged to have been performed before Counterclaim Defendant received actual notice of infringement. On

information and belief, Counterclaim Plaintiffs' claims are barred, in whole or in part, or otherwise limited pursuant to 35 U.S.C. § 287.

**SEVENTH SEPARATE DEFENSE**  
**(COSTS)**

8. Counterclaim Plaintiffs are precluded by 35 U.S.C. § 288 from recovering costs associated with its action.

**EIGHTH SEPARATE DEFENSE**  
**(NO ENTITLEMENT TO INJUNCTIVE RELIEF)**

9. Counterclaim Plaintiffs are not entitled to injunctive relief. Under *eBay v. MercExchange, LLC*, 126 S. Ct. 1837, 547 U.S. 388 (2006) any alleged injury to Counterclaim Plaintiffs would not be immediate or irreparable, Counterclaim Plaintiffs would have an adequate remedy at law, and the balance of hardships does not warrant injunctive relief.

**NINTH SEPARATE DEFENSE**  
**(LACHES, ESTOPPEL, UNCLEAN HANDS)**

10. The asserted claims of the '697 Patent are unenforceable as asserted, in whole or in part, by laches, estoppel, and/or unclean hands.

**PRAYER FOR RELIEF**

WHEREFORE, NexTier, reserving its right to amend the pleadings to add counterclaims and further defenses if warranted by discovery, prays for the following relief:

- A. A judgment dismissing Counterclaim Plaintiffs' Complaint against NexTier with prejudice.
- B. A judgment in favor of NexTier on all of its counterclaims.
- C. A declaration that NexTier has not infringed, contributed to the infringement of, or induced others to infringe, either directly or indirectly, any valid claim of the '697 Patent.

- D. A declaration that the '697 Patent is invalid.
- E. An award to NexTier of its fees and expenses of litigation.
- F. A judgment limiting or barring Counterclaim Plaintiffs' ability to enforce the '697 Patent in equity.
- G. Such other and further relief as this Court may deem just and proper.

**COUNTERCLAIM DEFENDANT'S DEMAND FOR JURY TRIAL**

Defendant hereby demands a trial by jury of all issues so triable.

Dated: August 11, 2021

Respectfully submitted,

/s/ Amir H. Alavi

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**ATTORNEYS FOR COUNTERCLAIM  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 11, 2021, a copy of the foregoing was served on the following party electronically through the U.S. District Court, Southern District of Texas ECF system to all counsel of record all of whom are Filing Users of the Court's Electronic Filing System.

/s/ Amir Alavi

Amir Alavi